



1-1-2008

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Recommended Citation

39 McGeorge L. Rev. 544

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The Missing Angels Act: Recognizing the Birth of Stillborn Babies

Colleen Snyder

Code Sections Affected

Health and Safety Code §§ 103040, 103040.1 (new), §§ 100430, 102950 (amended).

SB 850 (Maldonado & Correa); 2007 STAT. Ch. 661.

I. INTRODUCTION

Joanne Cacciatore gave birth to her daughter Cheyenne on her due date in July 1994.¹ Sadly, however, Cheyenne's tiny heart stopped beating only fifteen minutes prior to her delivery—she was stillborn.² Joanne was living one of every parent's worst nightmares, but the pain only grew when she called to order a birth certificate for her stillborn daughter.³ She had, after all, given birth to Cheyenne just as she had with her three previous children.⁴ The only difference was the horrible fifteen minutes that prevented Cheyenne from being born alive.⁵ A woman at the vital records office told Joanne that, because of those fifteen minutes, there would be no birth certificate.⁶ "You didn't have a baby. You had a fetus and the fetus died," the woman said.⁷

Joanne decided to channel her outrage and despair at this tragedy toward change.⁸ Keeping her daughter's memory alive, she founded the Mothers In Sympathy and Support (MISS) Foundation, a support group for parents of stillborn babies.⁹ The MISS Foundation has since been advocating in state legislatures across the country for birth certificates for stillborn babies.¹⁰

1. MISS Found., Legislative Reference Site, Frequently Asked Questions, <http://www.missingangelsbill.org/faq.html> (last visited July 12, 2007) [hereinafter MISS FAQ] (on file with the *McGeorge Law Review*).

2. *See id.* ("A stillbirth is a naturally occurring, intrauterine death that occurs after the 20th week of pregnancy all the way up to birth. The 'stillborn infant' is born without any attempt at respiration, including a beating umbilical cord.").

3. *See id.* (detailing the remarks made by a person at the vital records office in Arizona).

4. *See id.* (describing how Cacciatore's fourth pregnancy ended in stillbirth).

5. *Id.*

6. *Id.*; Richard Jerome & Susan Keating, *Proof of Life: A Campaign by Parents to get Birth Certificates for Stillborn Babies Stirs Up a Controversy*, PEOPLE MAG., Dec. 11, 2006, at 153, 154, available at http://www.stillnomore.org/PDF/People_Magazine.pdf.

7. MISS FAQ, *supra* note 1; Jerome & Keating, *supra* note 6.

8. Jerome & Keating, *supra* note 6.

9. *Id.*

10. *Id.*

II. LEGAL BACKGROUND

A. Existing California Law

The State Registrar of Vital Statistics oversees the registration of all fetal deaths¹¹ in California.¹² It is the job of the local registrar to record “[e]ach fetal death in which the fetus has advanced to or beyond the twentieth week of uterogestation . . . within eight calendar days following the [death] and prior to any disposition of the fetus.”¹³ Because a stillborn baby never takes a breath outside of the womb, the medical field considers a still birth to be a fetal death for statistical purposes.¹⁴

The parents are issued a certificate of fetal death containing “items relating to medical and health data” to be used for public health purposes.¹⁵ Before Chapter 661, this death certificate was the only official record parents of stillborn babies had of the life they lost.¹⁶ Although California law did not recognize the birth, it did mandate that parents of stillborn babies pay for the “final disposition” of their baby’s body—including funeral or cremation expenses.¹⁷

B. Other States

Every state in the nation issues a fetal death certificate for stillborn babies and requires families to pay for the burial or cremation of the body.¹⁸ Some hospitals, in states that do not yet issue Certificates of Birth Resulting in Still Birth, offer families an unofficial certificate commemorating the still birth.¹⁹

In 2001, Joanne Cacciatore’s home state of Arizona became the first state to pass the Missing Angels Act, allowing parents of stillborn babies to receive a Certificate of Birth Resulting in Still Birth.²⁰ This certificate is available to all parents of stillborn babies—no matter how much time has passed since the death.²¹ Taking it a step further, the Arizona Legislature also passed a one-time

11. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 850, at 1 (Apr. 24, 2007) (“[F]etal death is defined as a death prior to the complete expulsion or extraction from its mother of a product of conception (irrespective of the duration of the pregnancy).” (quotations omitted)).

12. *Id.* at 2.

13. CAL. HEALTH & SAFETY CODE § 102950 (West 2006).

14. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 850, at 1 (Apr. 24, 2007).

15. CAL. HEALTH & SAFETY CODE § 103025 (West 2006).

16. MISS FAQ, *supra* note 1.

17. *Id.*; see also CAL. HEALTH & SAFETY CODE § 7100(a)(4) (West Supp. 2007) (providing that the surviving parent(s) have the duty and financial liability of disposing of the decedent’s remains).

18. Ilene Lelchuk, *Wrenching Politics Surround Stillborns: Bereft Moms Want Birth Papers, But Abortion Complicates Issue*, S.F. CHRON., Apr. 10, 2007, at A1, available at <http://www.missingangelsbill.org/news/20070410.html>.

19. *Id.*

20. MISS FAQ, *supra* note 1.

21. *Id.*

tax exemption for families of stillborn babies during the year of the still birth, to help balance the costs of preparing for and then burying a baby within nine months.²² As of October 2007, two other state legislatures, in Missouri and Indiana, were considering such a tax exemption.²³

Since 2001, nineteen other states have followed Arizona in passing the Missing Angels Act and now offer a Certificate of Birth Resulting in Still Birth to all parents of stillborn babies.²⁴ Five other state legislatures were considering the bill during the current legislative session.²⁵ Nine other states offer a similar document, a Certificate of Still Birth, which the sponsor of the Missing Angels Act, the MISS Foundation, would like to change to a Certificate of Birth Resulting in Still Birth.²⁶ Although it may seem mere semantics, the MISS Foundation equates the word “stillbirth” with “death”²⁷ and argues “all states should record births as births . . . whether live or still.”²⁸

III. CHAPTER 661

Chapter 661 gives parents of babies stillborn in California the right to obtain a Certificate of Still Birth from their local county registrar of births and deaths.²⁹ The certificate must be on a form approved by the State Registrar of Vital Statistics³⁰ and will include the following information: (1) the date of the stillbirth, (2) the county in which it occurred, (3) the name and gender of the baby, (4) the time and place of the stillbirth and the name of the hospital in which it occurred, if applicable, (5) the name, birth date, and state of birth of each parent, and (6) the file number of the fetal death certificate.³¹ Chapter 661 gives local county registrars permission to charge an “appropriate fee” for the issuance of the certificate, to be determined annually in accordance with state law but

22. MISS Found., Legislative Reference Site, MISSING Angels Legislation—A State Chart, <http://www.missingangelsbill.org/stchart.html> (last visited Jan. 4, 2007) [hereinafter MISS State Chart] (on file with the *McGeorge Law Review*); Letter from Joanne Cacciatore, Chief Executive Officer, MISS Found., to Concerned Citizens and Parents of Stillborn Infants, <http://www.missingangelsbill.org/default.html> (last visited July 12, 2007) [hereinafter Cacciatore Letter] (on file with the *McGeorge Law Review*).

23. MISS State Chart, *supra* note 22.

24. *See id.* (listing the states that currently have legislation allowing parents to get a Certificate of Birth Resulting in Still Birth: Arizona, Arkansas, Florida, Indiana, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New Jersey, North Dakota, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, and Wisconsin).

25. *See id.* (listing the states with current legislation regarding the Missing Angels Act: Alaska, New Hampshire, New York, North Carolina, and Pennsylvania).

26. *See id.* (listing the states that offer only a Certificate of Still Birth as of October 2007: Colorado, Delaware, Idaho, Illinois, Kansas, Michigan, Ohio, Oregon, and Wyoming).

27. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 850, at 5 (Apr. 24, 2007).

28. MISS State Chart, *supra* note 22.

29. CAL. HEALTH & SAFETY CODE § 103040.1(a) (enacted by Chapter 661).

30. *Id.* (enacted by Chapter 661).

31. *Id.* § 103040.1(d)(1)-(6) (enacted by Chapter 661).

never to exceed the actual cost of providing the certificate.³² For the 2007-2008 fiscal year, the fee is capped at twenty dollars.³³ The certificate also must include a statement that reads, "This Certificate of Still Birth is not proof of a live birth."³⁴

Chapter 661 carefully defines stillbirth as "the delivery of a fetus where there was a naturally occurring intrauterine fetal death after a gestational age of not less than 20 completed weeks."³⁵ The language of the new law makes it clear that it is not creating any new rights for the fetus nor is it altering any existing rights of women to "reproductive privacy."³⁶ In an apparent effort to increase legislative support for the new law, the authors even included specific language to "reaffirm these protections in accordance with [the law]."³⁷

Chapter 661 also changes the requirement in prior law that all fetal deaths beyond twenty weeks gestation be recorded with the local registrar of births and deaths within eight days of the death.³⁸ Although that mandate still applies to naturally occurring fetal deaths, Chapter 661 exempts elective abortions performed in compliance with the Reproductive Privacy Act from the reporting requirement.³⁹

IV. ANALYSIS

According to the Centers for Disease Control and Prevention (CDC), about 25,000 pregnancies end in stillbirth every year in the United States.⁴⁰ By this estimate, stillbirth takes the life of ten times as many babies than Sudden Infant Death Syndrome (SIDS).⁴¹ The MISS Foundation estimates the number of stillbirths to be even higher, somewhere between 25,000 and 39,000 stillbirths each year.⁴² The Foundation believes the number of stillbirths is difficult to

32. *Id.* § 103040.1(f) (enacted by Chapter 661).

33. *Id.* (enacted by Chapter 661).

34. *Id.* § 103040.1(d)(8) (enacted by Chapter 661).

35. *Id.* § 103040.1(i) (enacted by Chapter 661).

36. *Id.* § 103040.1(j)-(k) (enacted by Chapter 661); *see also* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 850, at 8-9 (Apr. 24, 2007) (describing concerns that SB 850 (Chapter 661) could have an unintended impact on a woman's right to choose and proposing the wording later adopted in the law to protect against such consequences).

37. *See* CAL. HEALTH & SAFETY CODE § 103040.1(k) (enacted by Chapter 661) ("Through its courts, statutes, and under its Constitution, California law protects a woman's right to reproductive privacy, and it is the intent of the Legislature to reaffirm these protections . . .").

38. *Id.* § 102950 (amended by Chapter 661).

39. *Id.* § 102950(b) (amended by Chapter 661).

40. Ctrs. for Disease Control & Prevention, Stillbirths, <http://www.cdc.gov/ncbddd/bd/stillbirths.htm> (last visited July 17, 2007) [hereinafter CDC Stillbirths] (on file with the *McGeorge Law Review*).

41. *Id.*

42. Cacciatore Letter, *supra* note 22.

estimate due to “lax handling of stillbirth records and varying state compliance” with the CDC’s effort to count stillbirths in the country.⁴³

The CDC agrees that the method currently used to record stillbirths is problematic, as each state submits its own numbers to the CDC’s National Center on Health Statistics.⁴⁴ The problem with this system, according to the CDC, is that it often “underestimate[s] the true occurrence of stillbirth and . . . the information recorded on certificates is often incomplete.”⁴⁵ Adding to the mystery surrounding this all too common tragedy, almost half of all stillbirths occur with no known cause.⁴⁶ The CDC admits that “[a] better understanding of [the] causes [of stillbirth] is needed so that specific prevention and medical management strategies can be developed.”⁴⁷

One of the biggest obstacles to determining the primary causes of stillbirth is variance in hospital protocols.⁴⁸ The CDC emphasizes the importance of performing an autopsy, examining the placenta, and, in some cases, doing genetic testing to determine the cause of death.⁴⁹ If a consistent protocol was developed nationwide for administering these tests, more causes might be identified and prevention strategies could be developed.⁵⁰

The MISS Foundation believes that labeling stillborn babies as “fetal deaths” plays a part in the lack of awareness surrounding stillbirth.⁵¹ Because stillbirths are considered “fetal deaths,” they are not counted in infant mortality data in the United States.⁵² The MISS Foundation argues that it makes no sense that a baby born at eighteen weeks gestation who takes one breath outside the womb is counted in infant mortality statistics and receives a birth certificate, while other babies, many of whom are full term when they die, are labeled “fetal deaths” and, before Chapter 661, could not receive birth certificates.⁵³

The refusal to issue a birth certificate was especially upsetting to parents of stillborn babies because most women still have to deliver their babies, despite the horrible reality that they will not be born alive.⁵⁴ After delivery, California law requires parents of stillborn babies to take responsibility for burying or cremating the remains.⁵⁵ After labor, delivery, and planning for funeral arrangements,

43. MISS FAQ, *supra* note 1.

44. CDC Stillbirths, *supra* note 40.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *See id.* (discussing the challenges of tracking causes of stillbirth and the main tests that should be performed for research purposes).

51. Cacciatore Letter, *supra* note 22.

52. *Id.*

53. MISS FAQ, *supra* note 1.

54. MISS Foundation, Stillbirth: What Every Woman Needs to Know, <http://www.missfoundation.org/miracles/stillbirth.pdf> (last visited July 18, 2007) (on file with the *McGeorge Law Review*).

55. MISS FAQ, *supra* note 1; *see also* CAL. HEALTH & SAFETY CODE § 7100(a)(4) (West Supp. 2007)

parents were shocked to learn the law did not allow for a birth certificate commemorating the life they lost.⁵⁶ Chapter 661 corrects this perceived inconsistency for families of stillborn babies in California by allowing them to request a Certificate of Still Birth.⁵⁷

According to the MISS Foundation, this solution makes sense.⁵⁸ The Foundation argues that some babies are born alive and, sadly, other babies are born still.⁵⁹ They cite the World Health Organization's use of separate definitions for "birth"⁶⁰ and "live birth," clearly distinguishing between the two.⁶¹ The fact that stillborn babies are not born alive, they argue, does not mean they are not born at all.⁶² Although the California Legislature did not word the Certificate of Still Birth exactly as the MISS Foundation would have hoped, it is a compromise that ideally will give parents of stillborn babies the validation they seek.⁶³

Chapter 661 does nothing, however, to change the way stillbirths are recorded in California.⁶⁴ In fact, the Legislature was very careful not to expand the definition of a "stillbirth" to allow stillborn babies to be legally considered "infants" or counted in infant mortality statistics.⁶⁵ By exempting abortions from the reporting requirement for fetal deaths, the Legislature ensured that stillbirths are in a class of their own—not to be considered with elective terminations *or* babies who are born alive, if even for an instant.⁶⁶

The Legislature seems to have considered carefully all aspects of Chapter 661 to ensure that recognizing the birth of a "fetus" will not impede abortion rights.⁶⁷ Not only were the above precautions taken to isolate the definition of "stillbirth," applying it to California Health and Safety Code section 103040.1

(providing that the surviving parent(s) have the duty and financial responsibility for disposing of the decedent's remains).

56. MISS FAQ, *supra* note 1.

57. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 850, at 1-2 (Apr. 24, 2007).

58. MISS FAQ, *supra* note 1.

59. *Id.*

60. See WORLD HEALTH ORG., DEFINITIONS AND INDICATORS IN FAMILY PLANNING, MATERNAL & CHILD HEALTH, AND REPRODUCTIVE HEALTH 2 (2001), <http://www.euro.who.int/document/e68459.pdf> (on file with the *McGeorge Law Review*) (defining "birth" as "[t]he complete expulsion or extraction of a dead fetus of more than 500g or of a live fetus from its mother irrespective of the duration of pregnancy").

61. MISS FAQ, *supra* note 1.

62. *Id.*

63. MISS State Chart, *supra* note 22 (explaining why the MISS Foundation wants the certificate to be called a "Certificate of Birth Resulting in Stillbirth").

64. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 850, at 8 (Apr. 24, 2007).

65. CAL. HEALTH & SAFETY CODE § 103040.1(i), (j) (enacted by Chapter 661).

66. *Id.* § 102950 (amended by Chapter 661).

67. See Judy Lin, *Bill Pushes for Birth Certificates Acknowledging Stillborns*, SACRAMENTO BEE, Apr. 15, 2007, at A4, available at <http://www.missingangelsbill.org/news/20070415.html> (explaining the concern of pro-choice politicians that giving stillborn babies birth certificates could abridge abortion rights).

alone,⁶⁸ but politicians took the new law one step further, adding language to reaffirm “a woman’s right to reproductive privacy.”⁶⁹

V. CONCLUSION

Although the Missing Angels Act was intended only to bring dignity and awareness to the births of stillborn babies in California, it was thrust into the middle of a heated abortion debate.⁷⁰ Two groups of people, seemingly worlds apart—grieving parents of stillborn babies and abortion rights activists—were forced to work together to reach a compromise in word choice.⁷¹

The result seems to be a success and should accomplish the main objective, giving parents of stillborn babies the solace they deserve, without treading on abortion rights.⁷² The MISS Foundation points to the tremendous impact similar legislation has had on parents of stillborn babies in other states.⁷³ As one eighty-three year old woman described it, upon receiving her stillborn baby’s birth certificate fifty-six years after her loss, “I feel like I can finally die in peace.”⁷⁴

68. CAL. HEALTH & SAFETY CODE § 103040.1(i), (j) (enacted by Chapter 661).

69. *Id.* § 103040.1(k) (enacted by Chapter 661).

70. Lin, *supra* note 67.

71. *Id.*

72. See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 850, at 4-5 (Sept. 5, 2007) (describing the objective of comforting parents of stillborn babies while still safeguarding abortion rights).

73. MISS FAQ, *supra* note 1.

74. *Id.*